

**FILED**

**JUN 22 2018**

Clerk, U S District Court  
District Of Montana  
Billings

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Cause No. CR 17-46-BLG-SPW

Plaintiff,

vs.

**ORDER**

CHRISTOPHER RAY METZGER,

Defendant.

On June 21, 2018, the Court received from Defendant Metzger a letter seeking the Court's assistance with certain issues.

Metzger's letter is principally concerned with the time he will actually serve on the federal sentence and on a state sentence that apparently has not yet been imposed. Metzger also states that, two days before his time to appeal expired, he "was told to make a last minute decision myself without legal counsel." Letter (Doc. 37) at 1 ¶ 1.

The clerk filed Metzger's letter as a motion under 28 U.S.C. § 2255 because Metzger appears to allege a claim of ineffective assistance of counsel. It is not

clear, however, that Metzger truly intends to proceed with a § 2255 motion at this time. The matter is serious, because a defendant will generally be able to file one and only one motion under 28 U.S.C. § 2255. *See* 28 U.S.C. §§ 2255(h), 2244(b). Metzger has ample time yet to file a § 2255 motion, as the limitations period is one year, *see* 28 U.S.C. § 2255(f), and he was sentenced only about three months ago. But, if Metzger intends to file under § 2255 at this time, he has every right to do so.

As mentioned, most of Metzger's letter is concerned with a sentence yet to be imposed in state court. Metzger believes the transcript of the sentencing hearing may assist him in understanding what happened at the hearing. The Court agrees. The transcript is also needed to determine whether a reasonable person in Metzger's position would have wanted to appeal. *See Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000). The United States will be required to order the transcript.

Metzger must respond to this Order by stating whether he intends to proceed with a motion under 28 U.S.C. § 2255.

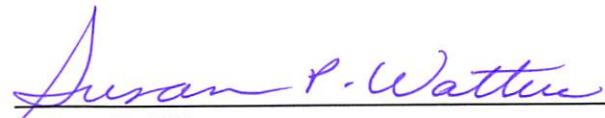
Accordingly, IT IS HEREBY ORDERED:

1. Pursuant to 28 U.S.C. § 753(f), the Court CERTIFIES the transcript of Metzger's sentencing hearing is needed to decide an issue presented by his claim under *Roe*. The United States shall immediately order the transcript for the Court's file and shall provide a copy to Metzger at his current location.

2. Metzger must respond to this Order on or before **July 25, 2018**. Failure

to timely respond will result in dismissal of his § 2255 motion without prejudice.

DATED this 22<sup>nd</sup> day of June, 2018.



Susan P. Watters  
United States District Court